Disrupting Deliberation: On the Ethics of Direct Action

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Abstract: Direct action refers to disruptive strategies that are employed to deter or obstruct contentious practices opposed by activists. This form of disruptive action is ‘direct’ because it is an attempt to stop a perceived wrong from occurring, rather than an attempt to communicate opposition to that wrong. Direct action is thus difficult to reconcile with the practices typically associated with deliberative democracy, particularly its emphasis on communication, reason-giving and respectful dialogue with discursive opponents. The aim of this paper is to explore the extent to which this tension between direct action and deliberative democracy can be ameliorated. The paper starts by outlining the normative challenges posed by direct action, which include its use of violence and its affinities to vigilantism. It then outlines an ethic for the conduct of direct action, which identifies certain negative and positive duties on the part of those engaged in this form of disruption. The paper then considers circumstances where deliberative democrats should permit the use of direct action, focusing particularly on systemic contexts that weaken the normative case for preferring deliberative or persuasive methods of advocacy over disruptive tactics. The discussion concludes by exploring whether the case of direct action reveals inherent limitations in deliberative democracy as a normative framework for democracy.

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The Sea Shepherd Conservation Society (SSCS), established in 1977 by former Greenpeace activist Paul Watson, is an international non-profit organization that aims ‘to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species’.¹ The SSCS has undertaken a number of campaigns to obstruct and prevent contentious maritime practices; for instance, in 1979 the organization disrupted seal hunting on the East Coast of Canada by spraying baby seals with a harmless organic dye that renders the animals commercially worthless for hunters. Their most notorious interventions, though, have involved pitched battles on the high-sea between SSCS vessels and ships of various nationalities—including Iceland, Norway and Japan—involved in what is alleged by activists to be illegal whaling. These interventions aim not merely to document or bear witness, but to obstruct and prevent whalers from capturing and killing whales. SSCS tactics include ‘firing smoke canisters onto decks, using nylon ropes to disable propellers, nailing shut drains that spill whale blood into the ocean and finally the antiquated “pirate-esque” ramming technique’ (Roeschke 2009: 107). The tactical repertoire pioneered by SSCS is thus aggressive and moderately violent, at least compared to the type of attention-grabbing campaigns associated with organizations such as Greenpeace (Khatchadourian 2007).

The SSCS is one of a number of organizations committed to direct action, defined as disruptive activity carried out with the aim of deterring or obstructing practices that are opposed by activists. This form of disruptive action is ‘direct’ because it is an attempt to stop a perceived wrong from occurring, rather than an attempt to communicate opposition to that wrong (Shaw

¹ This quote is from the SSCS official website at http://www.seashepherd.org/who-we-are/ accessed on 2 June 2015.
Direct action can—and often does—have the effect of drawing attention to a perceived wrong, but the primary rationale is not to publicize but to disrupt wrongdoing and/or wrongdoers (Milligan 2013: 28-31). It is sometimes defended as a particularly empowering form of disruption, as it emphasizes taking action to achieve desired change rather than merely calling upon others to help bring that change about (Jordan 2002: 61). Direct action is typically carried out as a means of exerting pressure on wrongdoers, which can include the use of polarizing rhetoric, threats, and/or the imposition of costs as a disincentive to persisting with their perceived wrongdoing (Carter 2005: 3). Direct action can function as a deterrent insofar as activists signal their intent to use it as a means of dissuading opponents from proceeding with their plans, or engage in direct action against one opponent as a means of deterring future conduct by the same and/or other opponents. The tactics that are often associated with direct action include open or covert attempts at disruption, such as blockades, trespass, occupations, sabotage, property damage and other forms of violence.

The practice of direct action appears to stand in sharp contrast to deliberative democracy, which generally calls upon us to reach out to fellow citizens in a reflective, respectful and dialogic manner. Consider the dynamics of the SSCS direct action campaigns against whalers. The disruption of whaling is clearly not an attempt to engage in, or instigate, reflection about the ethics of this practice, but rather to prevent or obstruct it. Nor, by reasonable extension, is it a contribution to a two-way dialogue with whalers or a broader national or transnational public about the morality of whaling. And, finally, anti-whaling disruption does not embody the type of mutual respect that is often associated with deliberative action, which requires us ‘to understand the other as a self-authoring source of reasons and claims’ (Mansbridge et al 2012: 11). SSCS activists are willing to achieve their goals not through arguments, but through the direct imposition of significant financial and operational costs on whalers. Their assertive tactics, such as ramming whaling ships or
throwing objects onto their decks, also expose whalers to the risk of injury, though as yet no such injuries have been reported as a result of their actions. The case of direct action, then, exemplifies the tension between activism and deliberation, which persists even if we take into account the possibility that alternative forms of advocacy and protest might embody deliberative norms to a somewhat greater extent (Humphrey and Stears 2006; Smith 2011; Young 2001). Although this tension cannot be wished away, direct action can be defended as a legitimate departure from deliberative forms of politics in certain circumstances. It is, in fact, possible to argue that in some contexts direct action should, as a matter of principled strategy, be preferred by activists over more deliberative or communicative forms of engagement. This paper will advance this argument through (1) exploring the practice of direct action, (2) elaborating ethical principles to guide the conduct of direct action, and (3) outlining the circumstances where its use might be appropriate.

1. The practice of direct action

Direct action has a central place in the lingua franca of activist movements, but it has not received the same degree of theoretical analysis as concepts such as civil disobedience and conscientious refusal. The practice is difficult to pin down because of its complex historical roots in two distinct ideological traditions. April Carter, in one of the best overviews, shows that direct action has been shaped by both anarcho-syndicalism and the Gandhi-inspired tradition of civil resistance (Carter 2005: 6). These ideological influences tend to pull the practice in opposite directions, with the former emphasising a tactical repertoire that includes violence and the latter emphasising a principled and strategic commitment to nonviolence. The approach that is adopted here does not engage these historical debates, but errs on the side of the anarcho-syndicalists for the practical
reason that doing so enables us to engage certain aspects of activist conduct that might otherwise be ruled out by definitional fiat.

(a) Coercion

The first aspect is that direct action is typically an attempt by activists to exert coercive power over their opponents. Coercive power can be seen as ‘A’s preferences or interests causing B to do (or changing the probability that B will do) what B would not otherwise have done through the threat of sanction or the use of force’ (Mansbridge et al 2010: 80). The most common method of coercion in direct action is cost levying, where costs are imposed directly on wrongdoers, indirectly via their allies, or on authorities or publics as a means of compelling intervention to prevent the wrongdoing (Humphrey and Stears 2006: 405).

Philippe Duhamel, an activist based in Quebec, discusses coercive dynamics in the context of a campaign in support of a moratorium on hydraulic fracturing (fracking) in the region. A number of activists used the threat of direct action as a deterrent to the continuation and/or resumption of fracking, backed up by a series of highly publicized training events for nonviolent direct action. The deterrent effect rests upon the costs to authorities and the fracking industry associated with direct action, which Duhamel illustrates through quoting a CEO of a major firm in the field: ‘a fracking operation costs about half a million dollars a day…that's why I won't pay this kind of money if the risk is too high that protesters will chain themselves to installations, or stop my teams from working’ (quoted in Duhamel 2013). This encapsulates the negative impact that direct action has on opponents, such that its threat can function as a means of exercising leverage. After a five year moratorium in Quebec was announced, activists vowed to continue preparing for direct action in case of a resumption of fracking. It is particularly notable that the activists persisted
with their threat of direct action *despite* the achievement of a moratorium. This suggests that the use or threat of direct action here is not intended as a short-term measure to establish a consultative or deliberative process, but as an ongoing strategy to secure a preferred outcome. It is also notable that Duhamel does not reflect on ethical issues raised by the campaign; instead he merely assumes that coercion is an effective and acceptable strategy. This reflects the fact that the ethics of coercion figure far less heavily in activist debates and literature than the separate issue of violence, which is somewhat surprising given that—as will be discussed below—the effects of coercion and violence on their targets often appear to be similar.

(b) Violence

The second feature is that *direct action can involve the threat or use of certain forms of violence*. The conditional ‘certain forms’ is necessary here because, as we shall see, activists who engage in direct action typically limit the range and extent of violent tactics employed in their campaigns. For the sake of the present discussion—and following the influential formulation of Robert Audi—I define violence as: vigorous physical attacks against persons, caustic, overpowering or vigorous psychological attacks against persons, or vigorous, malicious or incendiary destruction or damage of property (Audi 2009: 143).

Violence in direct action can be illustrated by the much-discussed case of eco-sabotage (Martin 1992; Vanderheiden 2005; Welchman 2001). The term refers to a tactical repertoire pioneered by the radical environmentalist group EarthFirst!, designed to halt, delay or deter environmentally-destructive practices. These tactics are described at length in *Ecodefense: A Field Guide to Monkeywrenching*, an influential practical guide for eco-saboteurs edited by Foreman and Heywood (1993). The guide characterises these tactics as ‘nonviolent’ and insists that activists take steps to ‘minimize any possible threat to people’ (23). It is more plausible, though, to characterize
these tactics as allowing for violence, because at least some appear to embrace vigorous, malicious or incendiary damage or destruction of property. This appears to be the case, for instance, for tactics such as damaging vehicles (137-138) and heavy equipment (139-163), burning machinery (166-169), attacks on urban residence, private automobiles, and corporate offices (210-213), use of slingshots (214-215), condo trash (216), and billboard trash (246-247).

The claim that property damage and destruction should be considered a species of violence is not universally accepted, but many philosophical accounts affirm it. Audi suggests that at least certain types of property destruction or damage would, on any credible account, be treated as clear cases of violence, including: ‘breaking windows by throwing stones through them, and breaking down the door of someone’s dwelling; destroying furniture, and burning or wrecking automobiles, dwellings, or places of business’ (Audi 2009: 139). John Morreall offers an argument that supports this intuition, through noting that property damage and destruction, like all forms of violence, is a means to ‘get at’ some person (Morreall 1991: 133). The sense in which violence against property is an attempt to ‘get at’ persons in eco-sabotage—as in related tactics used by radical animal rights activists—is illustrated by the way in which it is standardly used as a means of imposing costs on actors involved in environmentally-destructive practices (Hadley 2013: 3). The dynamics of violence in direct action will be explored in greater depth below.

(a) Vigilantism

The third feature is that direct action often aims to prevent wrongdoing in a manner that is similar to vigilantism. Vigilantism is defined here as the use or threat of violence by an agent that is not accountable to the state, directed at and for the purpose of preventing and/or punishing the actions of a perceived wrongdoer (Dumsday 2009: 58).
The similarity between vigilantism and certain cases of direct action may have escaped comment due to the assumption that vigilantism is paradigmatically a form of ‘establishment violence’, restricted to the unofficial enforcement of law (Johnston 1996: 232; Rosenbaum and Sederberg 1976: 4). There are, in fact, some campaigns of direct action that fit even this case. Paul Watson, for instance, has defended SSCS direct actions at sea on the grounds that his organization is enforcing international laws against actors involved in illegal whaling (Milligan 2013: 27-28).

There is, in any case, little reason to limit vigilantism to establishment violence, in light of the underlying similarity between vigilante action against perceived wrongdoing that is legally prohibited and against wrongdoing that is not legally prohibited (Dumsday 2009: 55-58). Consider, for instance, direct action in defence of animal rights by groups such as the Animal Liberation Front (ALF) and its various off-shoots (Garner 1992: 215-242; Kniaz 1995; Milligan 2013: 127-136). The actions include covert animal rescue, damage to laboratories and equipment used in animal experimentation, and efforts to deter the participation of individuals and organizations in animal research or the support of individuals and organizations for such research. The ALF regard the treatment of animals permitted by law to be abhorrent, so much so that its activists take direct action to obstruct, prevent or deter that treatment. Their actions often entail the threat or use of violence, by actors that are not willing to hold themselves accountable to the state. The activists would surely prefer the state to enact appropriate legislation and enforce animal rights, but in lieu of such official intervention they are engaged in a campaign that amounts to vigilante enforcement of animal rights. The direct action of the ALF at least appears to have a certain affinity with organizations that engage in unofficial enforcement of legal requirements, such as groups involved in vigilante policing of the US-Mexico border (Kirkpatrick 2008: 3).
2. The ethics of direct action

Direct action entails forms of conduct that are difficult to reconcile with the requirements associated with deliberative democracy. The rest of this paper sketches a normative framework for evaluating this form of disruptive activism, starting with considerations that are relevant for appraising its conduct. The examples of direct action that have been considered so far all have one thing in common: each is carried by activists who subscribe to self-imposed ethical norms. The campaign against fracking adhered closely to the logic of nonviolent direct action, while the actions of SSCS, EarthFirst! and the ALF all follow a loose set of guidelines about what constitutes acceptable and unacceptable modes of behaviour. These guidelines function not only to shape activist conduct, but to provide discursive resources for defending the practice of direct action in the public sphere should the need to do so arise. The fact that each campaign operates according to guidelines that apply to distinct tactical repertoires illustrates the limited prospects for a general ethics of direct action. Still, it is possible to suggest certain minimal norms to orientate further reflection about the ethical challenges posed by specific repertoires.

(a) The ethics of coercion

The first norm is that there is a defeasible presumption in favour of direct action as a mode of coercion that avoids the use or threat of violence. This may appear to be a straightforward and intuitively appealing principle, which requires little by way of comment or defence. There is certainly a perception among many activists that it is preferable to present their tactics as nonviolent, even if their campaigns are found on reflection to entail the threat or use of at least certain types of violence. The problem is that the intuitive case against violence also weighs against coercion; for example, both violence and coercion typically infringe autonomy through attaching
unpalatable costs to an actor’s preferred path of action. These impacts constitute infringements of autonomy, rather than minor interferences with freedom, because violence and coercion are often used to impose or interfere with significant and potentially life shaping choices (May 2015: 49; see also Moraro 2014). It would therefore be helpful to unpack the case for thinking that nonviolent direct action enjoys a presumptive normative appeal over violence, despite the apparently similar impacts it can have on targets.

The outlines of such an argument are suggested by Todd May’s philosophical analysis of nonviolent resistance. His central claim is that nonviolent activists respect the *dignity* of their opponents, where ‘such respect is a matter of recognizing that even if certain desires of others are left frustrated by nonviolent action, those others must be left with a route that allows them to continue to engage in meaningful projects without fear of psychological or physical abuse or without lacking access to basic goods’ (May 2015: 51-52). The object of our respect is thus not rational agency, but the good of leading a recognisably human life free from denigrations and deprivations that undermine our dignity. The idea of dignity is acknowledged by May to be vague, but he contends that to live with dignity is ‘to engage in projects and relationships that unfold over time; to be aware of one’s death in a way that affects how we see the arc of one’s life; to have biological needs like food, shelter, and sleep; to have basic psychological needs like care and a sense of attachment to one’s surroundings’ (May 2015: 51). Disrespect for dignity captures what is distinctive about the harms associated with violence, compared to coercion that is nonviolent.

The harms associated with physical and psychological violence, according to May, fail to give maximum latitude to carry on with our lives free from hurt, humiliation and mental scars (May 2015: 53). The harm associated with destruction or damage of property is more complex, but can have a similarly detrimental impact upon the capacity of owners or users to continue with
their plans free of fear or intimidation (May 2015: 67). If anti-globalization protesters throw rocks through the windows of Starbucks, for instance, this is likely to be perceived as intimidatory by those who work or drink there (May 2015: 68). The harm associated with nonviolent coercion, by contrast, does not threaten the dignity of its target, though it can infringe autonomy. This is so, on May’s account, even if nonviolent coercion has a profound impact on the trajectory of our lives, as is illustrated by his discussion of Ferdinand Marcos’s coerced but nonviolent exit from the Philippines. The deposed dictator ‘was no longer able to continue to lead the life he had led…[but] he was still able to live a decently human life, to have his basic needs met, and to be protected from various forms of abuse that might have come to him from the desire for revenge of many of his erstwhile subjects’ (May 2015: 88).

The argument that May offers is an analytical account of what nonviolent resistance is, rather than a normative defence. It is, in fact, unclear whether or not the argument supports a presumption of nonviolence over violence in coercive direct action campaigns. There is, to be sure, something a little counter-intuitive about the thought that nonviolent campaigns of coercion enjoy normative superiority to violent campaigns irrespective of the full range of effects such campaigns have on their target. This issue is touched on by May in relation to the case of a small, independent grocery store, ‘where a long-term blockade would likely result in the loss of livelihood for those who worked in it…with the further consequence that it would be difficult for those working in the store to find other employment’ (May 2015: 62).

There are two contrasting responses that shore up the presumptive case for nonviolent over violent coercion. First, it could be argued that the consequences for the grocery store are sufficiently devastating that the blockade should, despite initial appearances, be categorised as a violent campaign rather than a nonviolent campaign. This is, in fact, May’s stance; he argues that
the impact of the blockade on the grocery store would probably warrant categorizing it as an act of what he calls ‘structural violence’ (May 2015: 56). The situation would be different if the target of the campaign were larger or better resourced, like the companies that are often affected by the kind of anti-fracking protest considered above, as these targets can typically withstand the imposition of significant costs without such devastating consequences. Second, it could be conceded that the effects of nonviolent coercion on targets are in some cases worse than violence, but that further considerations support a defeasible presumption in favour of nonviolence. These include: reducing the risk of a tit-for-tat escalation of violence, leaving avenues open for dialogue and cooperation with perceived wrongdoers in the future, removing disincentives for sympathetic constituencies to participate in direct action, and not assisting the state by offering an easy rationale for repressive counter-measures (May 2015: 100; see also Sabl 2000).

The presumption against violence may be sound, but there is a case for a more reflective attitude on the part of activists about the ethics of coercion. It is not credible to contend that direct action clears the bar of ethical conduct merely because it avoids violence; in fact, although preferable, avoidance of violence is neither necessary nor sufficient for ethical conduct. The broader impacts of nonviolent but coercive campaigns of direct action should be acknowledged and taken into account in activist deliberations. This would include, for instance, sensitivity to the harsh impacts that coercive campaigns can have on the livelihoods of smaller firms or businesses compared to governments or large multinationals. One can presume that a coercive campaign that leaves such a firm with an available and accessible route to continue their operations—for instance,

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2 This last point requires some comment, as it contradicts another rationale for nonviolence that is often discussed: to inspire a violent reaction, thus creating a dynamic whereby the protesters achieve moral authority and either convert or discredit their opponents (May 2015: 70-105). I assume this rationale would typically be less compelling for activists engaged in direct action as it is understood here, as their principal goal is simply to prevent or deter wrongdoing through their action. The likelihood of violent repression will likely undermine their chances for success, which is why so many activists involved in direct action take steps to avoid it.
by ceasing trade with a particular supplier or halting discriminatory practices—is easier to defend than a campaign that aims to close it down. Activists must also be sensitive to the fine line between coercion and psychological violence; May downplays the role of general guidelines in favour of a recommendation that activists must be ‘attuned to the issue, seeking to confront one’s adversaries in a way that does not deny them the dignity of leading meaningful lives (55).

And certain concerns about coercive power that stem from a deliberative perspective are salient. For instance, the achievement of political goals through coercive power might not be conducive to the deliberative resolution of disagreement. This is because coercive power attaches costs to the adoption of certain resolutions, which function independently of the strength of the arguments that could be offered for or against those resolutions. It may even have a silencing effect on deliberation, as participants might be deterred from adopting positions that they know are likely to risk the ire of well-organized activists. Furthermore, the use of coercion as a tactic of resolving disagreements means that outcomes are more likely to reflect the existing distribution of political power. The resolution of the fracking dispute in Quebec, for instance, may simply reflect the power dynamics between industry actors, government, and activist networks. This is a resolutely realistic perspective, but it will be troublesome for more or less any conception of democracy that has a principled commitment to political equality (Humphrey and Stears 2006: 405).

(b) The ethics of violence

The second norm is that direct action should eschew on principle all but the most necessary and constrained forms of violence. This principle recognizes that, notwithstanding the presumption against it, direct action may still use violence on some occasions. The use of violence should be directly targeted at the wrongdoing and limited to situations where activists sincerely and
reasonably believe there to be no feasible alternative route to the prevention of wrongdoing. And the nature and extent of the violence used in direct action must not be determined solely through cost-benefit analysis, but must adhere to certain restrictions on physical and psychological violence. This attempt to impose constraints on the use of violence in direct action does not merely represent a philosophical imposition, but can be seen as an attempt to reconstruct an implicit dimension of contemporary activist practice. The idea is that, as Carter suggests, direct action often uses violence in a limited or constrained way, such that it remains recognisably distinct from guerrilla warfare or political terrorism (Carter 2005: 8-9).

The first constraint on violence associated with this norm is that direct action must reject the threat or use of lethal force against persons, which on a commonsense reading prohibits attempts to kill, maim, or inflict serious bodily harm. This will rule out most of the egregious forms of violence that are associated with terrorist acts, guerrilla warfare, and lethal vigilantism. For instance: the letter bomb campaign to companies involved in animal export, organized by a militant off-shoot of the ALF in 1994, would not be classed as constrained violence on this account (Jordan 2002: 68). Complications arise when we consider whether direct action must avoid any forms of action that risk death, maiming or serious bodily harm. This might prohibit eco-sabotage tactics such as ‘tree-spiking’—inserting nails in trees to raise the cost of logging—or certain types of anarchist ‘black bloc’ violence—such as the use of force to free protesters from police custody.

Tony Milligan offers the plausible suggestion that it is unreasonable to expect activists to avoid any action that might risk harm; we should, rather, expect activists to avoid tactics that amount to ‘reckless endangerment of life and liberty’ (Milligan 2013: 112).³ Evaluating what constitute reckless endangerment involves a combination of commonsense backed by experience.

³ An important clarification is that the requirement is to avoid reckless endangerment of others, rather than the voluntarily acceptance of endangerment on the part of the activist.
The first generation advocates of tree-spiking, for instance, insisted that it should be carried out in a way that minimized risk to loggers, but a serious injury suffered by a logger at Cloverdale in 1987 made it much harder to maintain that the tactic did not amount to reckless endangerment (Milligan 2013: 114-115). The case of black bloc violence is harder to evaluate, as the repertoire associated with it is diverse and its deployment is intimately bound up with the degree of preemptive or retaliatory force used by police (Wood 2012: 34-36). Although violent confrontations with police have often resulted in minor injuries, there has, to my knowledge, been no reported cases of police officers suffering death, maiming or serious bodily harm as a result of black bloc confrontations. It thus seems plausible to characterise it as constrained violence that does not amount to reckless endangerment, though a degree of reasonable disagreement is almost certainly inevitable in relation to such cases (see, for instance, May 2015: 68-69; Milligan 2013: 152-153).

The second constraint is that direct action should avoid subjecting vulnerable persons to psychological violence. It is not easy to specify the range of actions that would be ruled out by this constraint, though as a rough approximation we should be looking at modes of conduct that cause or risk psychological harms that are plausibly comparable to the physical harms associated with lethal force. According to C. A. J. Coady, ‘if we consider a case in which someone skilfully works upon another’s emotions and fears with a combination of words and deeds short of physical force, but with intentionally overpowering effects, then we may well feel that this is close enough to the physical model to be a case of violence’ (Coady 2009: 260). He considers the tragic case of a young woman who shot herself after her parents took her and her pet dog to the desert, instructed her to dig a shallow grave, and then told her to shoot the dog. This instance is notable for the emotional vulnerability of the victim, the immediacy of the pressure she was placed under, and the fact that the parents may not have intended to harm her (May 2015: 44).
It is difficult to find cases of direct action that involve psychological violence of a comparable intensity, though certain actions may foreseeably expose vulnerable persons to risks of emotional harm in a manner that amounts to a kind of reckless endangerment. Consider direct actions carried out by Operation Rescue and other anti-abortion protesters at clinics, which involved blockading entrances, sit-ins, and attempts to offer pregnant women ‘sidewalk counselling’. The campaign aspired to nonviolence, but there was controversy about the ethics of subjecting women to intense forms of pressure and scrutiny at a time when they are likely to be particularly vulnerable (Staggenborg 1991: 131). It is difficult, though not impossible, to maintain that pregnant women become victims of psychological violence merely because their clinic visit is disrupted by activists. It is, though, less difficult to demonstrate the significant risk of serious emotional harm to at least some visitors as a result of clinic actions. Of note is that clinic actions are by their nature indiscriminate in terms of the women that are affected, such that rape victims, teenagers, underage girls, and women suffering serious medical conditions associated with their pregnancy could all be affected. Also of note is that not all participants to clinic actions adhered to strict norms of civility, such that ‘sidewalk counselling’ on occasion becomes a cover for venting rage and abuse (Milligan 2013: 45). The problem here is not anti-abortion activism as such, but the reckless endangerment associated with inflicting psychological violence on persons who one could foresee are highly likely to be vulnerable at the time of the actions.\footnote{These limitations also apply to activists promoting causes that are widely treated as more progressive than prevention of abortions. First, it should be noted that there was considerable debate among pro-abortion activists about the ethics of engaging in ‘ clinic defence’. This debate was triggered by fears that such actions might increase levels of conflict at clinics and thus ratchet up the pressures on pregnant women (Staggenborg 1991: 132). Second, it is highly likely that the prohibition on subjecting vulnerable persons to psychological violence would also prohibit so-called ‘home visits’ carried out by environmental and animal rights activists against persons involved in or supportive of perceived wrongdoing (Garner 2005: 158-159). These tactics of intimidation and harassment can result in families losing the sense of place, comfort and security that is an essential aspect of home life.}
The constraints on violence that have been suggested here might be accused of begging an important question: are there any circumstances where the use of lethal force or psychological violence against the vulnerable would be justified? This is a question that has been raised in the context of recent discussions about political terrorism and just war (Held 2008). This context, though, illustrates the appropriateness of an ethical framework for direct action that restricts the use of violence in this way. It is not that more extreme forms of violence are necessarily unjustified, but that such violence typically goes beyond levels that most—albeit not all—activists are willing to accept as compatible with the aims and ethos of direct action. As noted, all the cases considered in this chapter involve attempts to deter or stop alleged wrongdoing according to a self-imposed ethical code. The constraints on lethal force and harming the vulnerable are minimal norms that are accepted—or at least aspired to—across a broad spectrum of direct action campaigns, which is reflected in the intense controversy and self-criticism within activist circles whenever such norms are perceived to be violated.

The minimal content of these norms is also a reminder that a wide range of violent acts remain compatible with the ethics of direct action. This involves the threat or use of physical aggression, property damage and destruction, and the intentional or unintentional infliction of psychological violence on non-vulnerable persons. It therefore should go without saying that the threat or use of constrained violence remains deeply problematic. Constrained violence often involves forms of coercion that amount to violations of legal and moral rights. Steve Vanderheiden, in a nuanced discussion of eco-sabotage, notes that ‘the intentional destruction of property constitutes a violation of rights (though not an act of terrorism), regardless of whether committed from simple malice or a well-meaning commitment to ecological sustainability’ (Vanderheiden 2005: 432). There is also a risk that the use of violence by social movements can
either generate, or become an element of, a broader cycle that leads to escalating violence by radicalized elements. Sydney Tarrow observes that competition between radical and moderate elements of social movements often takes the form of conflict over violence, with the radical elements tending to push towards escalation as a reaction to a perceived betrayal or weakening of resolve on the part of moderate elements (Tarrow 2011: 208). The environmental, animal rights and anti-abortion movements, for instance, all have militant fringe elements that have ultimately embraced the use of unconstrained violence (Milligan 2013: 108). These considerations thus set a high justificatory bar for the use of constrained violence in direct action.

*(c) The ethics of vigilantism*

The third norm is that *direct action should be conducted by agents who take certain steps to make themselves accountable to relevant non-state constituencies.* Direct action, like vigilantism, involves actors attempting to prevent or deter wrongdoing in a manner of their choosing. A problem is that their actions can have detrimental impacts upon non-participating actors who share their opposition to the wrongdoing. Consider, for instance, the opposition to direct action that is expressed by less radical elements of the environmental, animal rights, or anti-abortion movements. Their worry is that direct action risks bringing the whole movement into disrepute: for instance, through associating their cause with violence, shoring up official support and public sympathy for the wrongdoers, and reducing the scope for mainstream activism to receive a hearing in the public sphere. There is, to be sure, an irreducible tension between moderate and radical elements of any social movement, but the thought here is that radical elements should at least meaningfully engage with their more moderate critics.
There are two steps that activists could take to enhance their accountability to moderate critics. The first is to clearly set out the ethical and strategic guidelines that activists rely upon in conducting their direct actions, which is a fairly common practice among activist movements that routinely engage in this form of disruption. The primary reason that such movements take this step is to offer practical guidance for activists in planning and carrying out their actions. The aforementioned pamphlet *Ecodefence*, for example, functions as an invaluable resource for eco-saboteurs, with the various editions documenting the evolution of tactics and methods as a result of ongoing reflection on their effectiveness and safety. The contributors to the pamphlet devote considerable attention to engaging in eco-sabotage in a way that is effective, while at the same time addressing potential risks to loggers and members of the public. This is illustrated by the discussion of road spiking, which states that: ‘by making spikes sharper, and by using spike- and nailboards, we may increase the risk of injury — and that is not our purpose. Thus, use these emplacements only where there is little chance of injury to the general public’ (Foreman and Heywood 1993: 114).

Although such guides have the primary purpose of guiding practitioners, their circulation beyond these narrow activist circles provides a focal point for a more inclusive discussion about the ethics of direct action. The guides enable moderate critics—and sympathetic outsiders—to gain a better appreciation of the tactics used in direct action, which means that evaluations can be grounded in knowledge of activist practice. The guides also function as an informal means of holding activists to account, as moderate critics can either interrogate the methodology of direct action or criticize failures of activists to observe self-imposed standards in practice. It is notable, for instance, that academic discussions of the ethics of eco-sabotage often cites *Ecodefence* as a primary source of information (Martin 1990).
The second step is to engage in dialogue with moderate critics, by defending their position, responding to objections and reaching agreements about tactics and practices that might be mutually beneficial. This dialogue can only occur, of course, if moderate critics are also willing to meaningfully engage with radicals, which is by no means always the case. The risk is that exchanges between radical and moderate perspectives, if they take place at all, often amount to little more than a scripted exchange between non-negotiable positions. A recent exchange between Paul Watson, the head of SSCS, and Gísli Ólafsson, the chairman of the Icelandic Whale Watching Association, was a respectful but ultimately non-dialogic process whereby both parties merely restated their respective positions on the merits of direct action.5

The discussions about black bloc tactics among North American anti-globalization activists, which were triggered by the experiences in Seattle, were arguably more dialogic. These debates, documented by the sociologist Lesley Wood, tend to be fraught and polarizing, with those sympathetic to property destruction clashing with those who, for principled and/or pragmatic reasons, are committed to nonviolence. The differences in opinion across the broader movement are so profound that, in several anti-globalization protests, nonviolent protesters go so far as to report—and in some cases hand over—black bloc protesters to the police (Wood 2012: 95). There are occasions, though, where activists transcend their deep differences through taking steps to understand oppositional perspectives and reach negotiated agreements. This scenario played out against the backdrop of Washington, DC protests against the IMF and World Bank in 2000, prior to which nonviolent participants agreed not to marginalize or condemn property destruction and black bloc participants agreed to conduct their actions in a manner sensitive to the needs and concerns of nonviolent protesters. These promises were kept during the demonstration: ‘the black

5 The brief ‘dialogue’ can be found at http://www.seashepherd.org/commentary-and-editorials/2015/05/14/we-want-to-save-the-whales-but-not-in-the-way-you-want-to-save-the-whales-707
bloc intentionally distracted police from blockades and kept property destruction away from more vulnerable participants’ (Wood 2012: 100). The willingness of nonviolent and violent protesters to broker agreement was beneficial to both; violent protesters gained the benefits of inclusion within the broad church of anti-globalization protest, while nonviolent protesters were both protected from and arguably assisted by the black bloc.

The basic idea behind these recommendations is to establish lines of mutual influence between direct action groups and elements of a larger social movement. The hope is to offset, at least to some degree, the risk of direct action becoming a mode of behaviour that is, like vigilantism, essentially unaccountable to any other affected party. Jennet Kirkpatrick’s analysis of frontier vigilantes illustrates the mind-set that can arise among citizens who decide to take it upon themselves to right a perceived wrong. She observes that ‘frontier vigilantes, as a group, were not only capable of oppression and injustice, but also of blinding self-absorption and a steadfast conviction that they were always right’ (Kirkpatrick 2008: 60). There is a risk that direct action can lead to a similar enclave mentality, insofar as activists become fixated on the disruption of perceived wrongdoing irrespective of the broader consequences of their actions. Through maintaining a dialogic orientation towards moderate critics within a social movement, at least where those critics are open to entering such a dialogue, activists might diminish the risks of falling into the vigilante’s righteous self-absorption.

This remedy to enclave mentalities is inevitably limited, as it does not address the issue of whether and to what extent activists should engage with perspectives beyond those represented within their broader social movement. This concern is particularly acute in democratic societies, as there is a presumption in favour of resolving collective disagreements through legal-political processes inclusive of a wide range of societal perspectives. Kirkpatrick notes that the frontier
vigilantes were suspicious of such procedures, on the grounds that they ‘obfuscated the will of the people or made the will of the people untenable because they gave voice to dissent and difference’ (Kirkpatrick 2008: 60). Direct action betrays a similar impatience, at least insofar as its practitioners prioritise their judgements of right and wrong over that of a democratic process. This is reflected in their belief that direct action to prevent the wrongdoing is warranted without the mediation of a dialogue with those who do not share their convictions. The epistemic privilege that activists place on their own judgments sits uneasily with a commitment to democracy as a method of pooling diverse perspectives to reach collective decisions (Humphrey 2006: 318-319). This worry persists even if activists are engaged in a dialogic exchange with non-participating, but essentially sympathetic, third parties.

3. The case for direct action

The preceding section elaborated an ethic for the conduct of direct action, but little has been said so far about the circumstances where its use might be appropriate. The aim of this section is to approach this issue from the perspective of the much-discussed ‘systemic turn’ in deliberative democratic theorizing (Dryzek 2010: 7). The central question is: when, if ever, does the case for resisting wrongdoing through direct action outweigh the case in favour of resisting it through more deliberative or communicative forms of engagement? The discussion does not assume that activists

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6 The systemic turn is characterised by a focus on deliberation as a set of inter-related practices that are dispersed across a larger ‘macro-level’ complex. The most influential statement of the systemic turn is the introductory chapter co-authored by a number of leading deliberative theorists to the edited collection *Deliberative Systems* (Mansbridge et al 2012). The systemic turn is, in my view, a promising development for deliberative democratic theory, but remains vulnerable to powerful objections about the extent to which it remains compatible with core normative commitments of this theory (Owen and Smith 2015). In a forthcoming paper, I defend an interpretation of the systemic turn that retains a focus on the macro-level while insisting the various elements of a deliberative system must embody norms of deliberative action to an appropriate degree. On this account, a non-deliberative practice such as direct action should be treated as an ‘external’ variable that can have positive or negative impacts on the functionality of a deliberative system (Smith forthcoming).
contemplating direct action must be committed to the full range of norms and values associated with deliberative democracy, but it does assume that there is a presumptive case in favour of attempting deliberative resolutions of conflict prior to the adoption of non-deliberative methods. On the assumption that this presumptive case can be overridden, though, it may be the case that activists should prefer direct action on moral and strategic grounds.

(a) The aim of direct action

The first point is that the case for direct action will be much stronger insofar as it stands a reasonable chance of preventing or disrupting activity that is a genuine, serious and urgent case of wrongdoing. The wrong is ‘genuine’ in the sense that there is a credible case that the activity in question is wrongful, ‘serious’ in the sense that it has significant negative consequences for human and/or non-human life, and ‘urgent’ in the sense that these deleterious consequences are imminent or ongoing. The gravity of the wrong must, furthermore, warrant the degree of coercion, violence, or vigilantism that is employed within the direct action campaign. The issue of urgency is a particularly salient consideration in weighing the case for direct action over deliberative or communicative strategies. This is because direct action is a means of disrupting wrongdoing without the mediation of a dialogic exchange with wrongdoers or others. The case for eschewing this kind of dialogue is likely to be stronger if the wrong is urgent, as dialogic resolution may take much longer than direct action as a means of disrupting or preventing the wrong.

There is perhaps little scope for general reflection on the range of wrongful acts that are genuine, serious and urgent enough to warrant direct action; indeed, it is to be expected that reasonable opinion might differ in relation to specific cases. Matthew Humphrey argues credibly that democratic decisions with certain types of irreversible consequences might form the backdrop
to a plausible defence of direct action. The reason is that democratic decisions should be open to re-examination and revision in an ongoing democratic process, which is the case in relation to issues such as taxation rates, welfare spending, education policy and the like. There is, in particular, ‘an important distinction to be made between situations where political actors are forced to play a one-shot strategy from those where repeated attempts at policy change are viable’ (Humphrey 2006: 321).

This distinction is illustrated through a comparison between the imposition of punitive tax rates on the wealthy and exploitation of natural resources that leads to global warming and loss of biodiversity or wilderness. The imposition of punitive tax rates is reversible in the sense that the wealthy can campaign for less punitive tax rates and the restoration of the wealth that was lost during the period of the punitive rates. This is not the case in relation to exploitation of natural resources, as global warming and many instances of biodiversity or wilderness loss are generally not taken to be reversible. The upshot is that ‘over this range of goods, where there is a justifiable belief in policy irreversibility, lack of alternatives adds weight to the public justification of extra-democratic forms of politics against certain policy outcomes’ (Humphrey 2006: 322). This argument does not establish policy irreversibility as a necessary or sufficient condition for rightful direct action, because it is possible that alternative considerations might tip the balance in favour of direct action or aspects of activist aims or conduct might tip the balance against it. The argument does, though, provide a paradigmatic example of how activists could present a wrong in such a way that it strengthens their contention that direct action should be preferred over deliberative or communicative strategies.
The case of an environmental activist who sabotaged an auction of Utah public lands illustrates how irreversible consequences can figure in a defence of direct action. The auction had been somewhat hastily set up by the outgoing US administration in 2008, with the aim of leasing the land to oil and gas companies for commercial exploitation. The decision to go ahead with the auction was controversial due to the speed with which it was arranged, concerns about depletion of wilderness and red rock lands, and the inclusion of lots that were adjacent to the Canyonlands National Park. The Southern Utah Wilderness Alliance (SUWA) and other non-governmental organizations had initiated legal action to call for further review and consultation, but the legal case could not be settled prior to the auction. Tim DeChristopher attended a public protest outside the auction venue, but went one step further by entering the auction and posing as a bidder. Through his participation he managed to raise the price of a number of lots, purchase parcels that he had no intent to pay for, and ultimately cause the auction to be suspended.

This case constitutes a clear example of an individual abandoning an essentially symbolic and communicative protest in favour of taking part in direct action. His action appears to fit the argument considered above; that is, his direct action appears to be an acceptable course for an actor forced to play a one-shot strategy. If the auction had gone ahead, it would almost certainly have had substantial and irreversible consequences for environmental protection and wilderness preservation in the region. These consequences mean that, for opponents of the auction, ‘embarking on a political campaign after the event in order to enact policy change is not an option’ (Humphrey 2006: 322). His use of direct action receives further support, because concerns about the legitimacy of the auction were later vindicated. As a result of the time bought by DeChristopher’s intervention, a federal judge subsequently ordered that attempts to reschedule the auction.

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7 The following draws heavily on the activist’s account of the incident at http://www.timdechristopher.org/about. Thanks to Jennifer Welchman for alerting me to this case and its relevance to my argument.
auction should be suspended due to the failure of relevant authorities to abide by statutory requirements to consider environmental impacts of public land auctions for energy development (Glaister 2009).

This last point illustrates how addition considerations, distinct from the irreversibility of a decision, can lend further weight to the case for preferring direct action over deliberative or communicative disruption. The case for direct action is particularly strong in this instance because concerns about irreversible consequences go hand-in-hand with credible objections to the legitimacy of the decision to go ahead with the auction.\(^8\) It is also worth noting that the action did not employ any violence, though the gravity of the wrong is such that a certain degree of constrained violence might have been warranted. Arguments for or against the use of direct action are thus likely to vary in terms of their strength, because such arguments must be sensitive to a range of salient considerations.

This insight may be helpful in considering other cases where activists can or do invoke irreversible consequences as part of a defence of their direct action. Humphrey considers the case of anti-abortion activists, who ‘may claim that they now appreciate that it is the non-reversible consequences of a policy of democratically endorsed terminations that can be justifiably resisted according to extra-democratic means’ (Humphrey 2006: 323). It is, though, not clear that this claim amounts to a defence of direct action—specifically the tactic of clinic blockades—that is as compelling as the auction case. There are, for instance, plausible reservations about the morality of anti-abortion aims; Todd May argues that legal prohibition of abortion would violate women’s dignity, as ‘there is very little more central in constructing a life for oneself than the decision whether to bear and raise a child’ (May 2015: 160). The anti-abortion activists considered by

\(^8\) The discussion in the following sub-sections illustrates how the systemic context and impacts of direct action might also factor in our evaluations of direct action.
Humphrey also fail to raise credible doubts about the democratic legitimacy of the policy of endorsed terminations, which differentiates their action from the auction case. And there are, as noted above, significant concerns that the tactic of clinic blockades subjects vulnerable persons to the risk of psychological violence, which puts further distance between anti-abortion action and the auction case. It may be premature to conclude that anti-abortion activism could never be vindicated, but it seems reasonable to suggest that the case for clinic blockades over more communicative or deliberative methods is—absent further considerations—much less credible than the land auction case.

(b) The context of direct action

The second point is that the case for direct action will be further enhanced if certain features of the systemic context suggest that deliberative or communicative action would be inappropriate or ineffectual. The phrase ‘systemic context’ is used here as a short-hand to refer to the nature and extent of societal deliberation that has, or has not, taken place about the wrong at hand. This broader context, in a sense, holds little of practical relevance for an activist contemplating the use of direct action, because her aim is to take action that will prevent or disrupt wrongdoing without making a communicative or dialogic appeal to a given audience. The activist could, however, still refer to features of the broader systemic environment in order to support her decision to favour direct action over deliberative or communicative protest. Even if the activist, for whatever reason, chose not to refer to that context in defending her action, the context could still be relevant to third parties looking to evaluate her direct action.

The first relevant context is a deliberative system that has coalesced around the view that a contentious activity is wrongful and has taken action to reflect this fact. This would be the case
if a plurality of actors had, after considerable dialogue within and across multiple sites, passed and enacted authoritative resolutions in relation to the activity, such that it is now regulated, restricted, or prohibited. It may be the case that recalcitrant parties refuse to accept the outcome of this process, or exploit loopholes in violation of the spirit of the outcome, because they believe that they are entitled and/or able to ignore or subvert its authority. A credible defence of direct action against this recalcitrant wrongdoing may be forthcoming, insofar as activists invoke the authority of the resolutions passed to regulate, restrict or prohibit the activity. Activists could contend that direct action is preferable to deliberative action, as a deliberative process has already run its course and the immediate priority is not to instigate further deliberation but to ensure that the resolution is enforced.

There are difficulties in matching this scenario to real world contexts, as questions might be raised about the adequacy of the deliberative process that generated the resolution, the extent to which apparently recalcitrant behaviour is against the spirit or letter of the resolution, and the implied superiority of direct action to deliberative or communicative action as a means of enforcing the resolution. Still, the SSCS campaign against Japanese whaling suggests that there are at least some real world scenarios that approximate this scenario to a certain degree. The International Whaling Commission (IWC) imposed a moratorium on whaling in 1986, with exceptions that allowed Norway, Iceland and Japan to engage in ‘scientific’ whaling. The claim of SSCS, and others, is that ‘scientific whaling is actually a cover for a continued (but sharply reduced) commercial catch; the whale products are still used as before, and precious little science comes from the dead whales’ (Dryzek 2000: 126). The SSCS thus frame their activity as an informal attempt to police the moratorium; as Milligan puts it, ‘defence of whales is not claimed as civil disobedience precisely because such a claim might detract from the illegality of hunting’ (Milligan
This framing receives some credibility from a recent International Court of Justice (ICJ) judgement, which ordered Japan to suspend its whaling programme in the Southern Ocean on the grounds that it is an essentially commercial rather than scientific endeavour (McCurry 2014). The major difficulty with the SSCS is that its direct action campaign may not be the most effective means of promoting compliance with the IWC moratorium, though it is important to note that the international whaling regime—like most other transnational arrangements—is not blessed with a wide spectrum of effective enforcement mechanisms (Roeschke 2009).

The second relevant context is the presence of pathologies that prevent the emergence of system-level deliberation about contentious practices. This might be due to a familiar range of dynamics, such as: failure to include relevant societal perspectives, inequalities that enhance the influence of certain perspectives at the expense of others, and entrenched discourses that lead to deliberative inertia. These dynamics might be contested through deliberative or communicative forms of engagement, such as suitably conducted civil disobedience campaigns that correct for the pathologies that block system-level deliberation (Markovits 2005). If these resources have been attempted without apparent success, or there is compelling reason to think that such attempts would be ineffective, this may strengthen the case for direct action. According to Archon Fung, activists have reason to favour tactics such as direct action in circumstances where ‘obstacles are so high—perhaps because systems of decision making in that arena are highly entrenched and bureaucratized or because the inequality of power is so great—that there is no feasible path to advance deliberation’ (Fung 2005: 411).

There is no hard and fast test to determine when activists should give up on deliberative or communicative strategies, but the ability and willingness of wrongdoers to reciprocate an

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invitation to dialogue is obviously an important barometer. The case of the anti-globalization movement, according to Fung, illustrates the limits of deliberative strategies and the scope for militant confrontation. As he puts it, ‘the governance arrangements that set the terms of world trade and international finance among states are not now, nor will they become in the foreseeable future, fair and inclusive deliberations’ (Fung 2005: 412). There is thus greater leeway to engage in coercive or violent activism that raises costs of ‘business as usual’ for these institutions. The decision to engage in forms of direct action is strategic to a significant degree; activists must decide whether and to what extent their actions can make a genuine contribution to disrupting wrongdoing. The advocates of black bloc tactics argue that property destruction imposes genuine costs on global corporations, while also operating as part of a symbolic or performative strike against capitalist institutions and assumptions (Wood 2012: 35). These claims are contentious, with responses within anti-globalization circles ranging from downright hostility to broadly sympathetic attempts to demonstrate their counter-productive impacts on the broader movement (Starr et al 2011: 155-169). The point here is not to attempt to resolve this seemingly intractable dispute, but to illustrate how the broader systemic context of an activist campaign can support a shift in activist thinking toward a more strategic orientation toward the use of coercive or violent direct action tactics (Jordan 2002: 66-67).

There are also systemic contexts that might weaken the case for preferring direct action over deliberative or communicative forms of engagement. This might be the case if relations between moderate social critics and perceived wrongdoers are at an early or delicate stage, such that the use of direct action could reduce the prospects for a satisfactory agreement or negotiated compromise. It is not necessary to posit the idea of a perfectly functioning system, which is on the cusp of achieving a deliberative settlement to address perceived wrongdoing. It is sufficient to
point to situations where there is either an ongoing dialogue between relevant perspectives or an ongoing campaign to establish such a dialogue. The risk of direct action is that it is likely to have a polarizing effect on any broader process of engagement. The target of the action may harden their stance, while exploiting the opportunity to present their critics as unreasonable extremists. The broader discursive context of the engagement might also shift, such that public opinion may turn against those arguing against the perceived wrongdoing. These dynamics can, of course, emerge in any context, but it is particularly irresponsible to employ direct action at a sensitive moment in a broader campaign to resist wrongdoing.

Dave Foreman, the influential figurehead behind the emergence of EarthFirst!, argued that ‘monkeywrenchers generally should not act when there is a nonviolent civil disobedience action — e.g., a blockade-taking place against the opposed project’ (Foreman and Heywood 1993: 24). There is an implicit recognition here that eco-sabotage can be counter-productive if used alongside an ongoing communicative protest against a potential target. Steve Vanderheiden goes further, arguing that ‘ecotage should never be used before both legal and nonviolent extralegal tactics have been exhausted not only for the practical reason that such tactics undermine ongoing negotiations and alienate political constituencies rather than cultivate them as potential forces of change, but also because a more objectionable tactic can never be ethically justified if a lesser one will do’ (Vanderheiden 2005: 440). This prescription certainly has considerable weight, though it is perhaps feasible that countervailing considerations might override it in certain rare circumstances.

(c) The impacts of direct action

The third point is that the case for direct action will receive further support if it has beneficial systemic impacts that are unlikely to have been achieved through deliberative or communicative
measures. Marc Stears and Matthew Humphrey argue that it is inappropriate to evaluate direct action in terms of its positive or negative impacts on societal deliberation. This is, in part, because it is unreasonable to expect activists to anticipate the short and long run consequences of their action for societal deliberation (Humphrey and Stears 2006: 410). It is also, perhaps more fundamentally, because activists typically use direct action to disrupt or prevent wrongdoing, not to promote discussion or debate about wrongdoing (Humphrey and Stears 2006: 414-415). These points are both compelling, but it remains the case that—irrespective of activist intentions—their decision to engage in direct action can receive *post facto* support in light of positive systemic consequences that can be credibly attributed to their campaign.

The first beneficial impact is related to the assistance that direct action can provide to victims of wrongdoing. These acts can have unanticipated but consequential systemic impacts, insofar as the beneficiaries are subsequently able to organize and articulate their perspective in the public sphere. This scenario can be illustrated through considering the case of desert humanitarian groups that patrol the US-Mexico border, in order to provide assistance to unauthorized border crossers. These groups, as Luis Cabrera argues, operate within a global citizenship framework, as their work is motivated by opposition to ‘a Border Patrol strategy of hardening enforcement at traditional urban entry points and seeking to use the desert as a deterrent’ (Cabrera 2010: 104). The majority of these groups limit their activism to offering food or transporting sick and injured crossers to medical facilities, but some volunteers take the additional step of assisting able-bodied migrants to cross the border and relocate in the US. These acts, as Cabrera suggests, disrupt border regimes that contribute to the entrenchment of inequalities, by helping ‘individuals expand their access to resources and opportunities through illicit entry’ (Cabrera 2010: 139).
The relevant systemic effect of these actions is not merely their modest impact on the global
distribution of resources and opportunities, but their contribution to enhancing the political agency
of unauthorized migrants in receiving countries. These dynamics are charted by Cabrera, in his
analysis of protest movements organized by unauthorized migrants within receiving countries that
call for the regularization of their status. These movements perform the vital role of giving
visibility and voice to societal perspectives that are systemically excluded from the public sphere.
The functional capacity of these protests is a reflection of the impressive self-organization of
migrants, but ‘the potential for those kinds of demonstrations to prompt changes within receiving
states is based largely on the presence of so many unauthorized immigrants already in those states,
and the challenges their often deep participation in society poses to exclusionary understandings
of membership’ (Cabrera 2010: 140). The presence of so many migrants is, of course, primarily a
result of the actions of border crossers, but desert humanitarians who lawfully or unlawfully assist
their crossing make significant contributions to swelling the ranks and thus enhancing the agency
of unauthorised migrants.

The second beneficial impact does not relate to the outcomes of a particular campaign taken
in isolation, but to the systemic consequences that follow from the presence of credible groups that
proclaim a strategic commitment to the use of direct action. There are, as noted a number of times
throughout this paper, moderate and radical elements of many social movements, which can be
plotted on a broad spectrum reflecting their divergent tactical approaches. The more moderate
wing embraces institutional cooptation, the more radical wing embraces militant confrontation,
while centrist groups may combine elements of cooptation with less confrontational forms of
protest and campaigning. It is possible that the movement as a whole benefits from the presence
of radical groups that are known to engage in confrontational forms of direct action. The centrist
and moderate groups benefit, for instance, insofar as they can claim to be the acceptable face of the movement, thus earning greater recognition as reasonable parties that are open to engagement and negotiation with perceived wrongdoers (Stevenson and Dryzek 2014: 33).

These dynamics are discussed by John Parkinson in relation to the systemic impacts of the Disability People’s Direct Action Network (DAN), whose campaigns have the effect of creating space for more moderate groups, such as the British Council for Disabled People, to gain discursive credibility and access to decision-making bodies. As he puts it: ‘from the standpoint of the deliberative system, what matters is that the public conversation is changed rather than who precisely is speaking at any one moment’ (Parkinson 2006: 121). It must be stressed, though, that it is desperately difficult to ascertain whether and to what extent direct action is responsible for these kinds of beneficial impacts on the deliberative system. It is also the case that the actions of radical groups can negatively impact upon a movement, by tainting moderates and centrists with association, gaining sympathy for perceived wrongdoers, and destabilizing or marginalizing ongoing efforts of moderates or centrists (Gavin 2010). This is particularly the case, as we have seen, if the timing of direct action is such that it has a detrimental impact on an ongoing campaign or negotiation. The scope for direct action groups to have positive impacts on the visibility and voice of social movement perspectives is thus a matter of considerable uncertainty.

The same can be said about a third beneficial impact, which is the potential for direct action to stimulate society-wide deliberation about the wrongdoing that it targets. Although direct action typically does not aim to promote discussion or exercise influence through mobilizing public opinion, it can attract significant attention insofar as it is creative, theatrical or confrontational. A direct action campaign might achieve what Simon Tormey describes as ‘resonance’, which means that it reflects, amplifies or, more ambitiously, fosters a sense of moral condemnation that is
broadly shared across a particular public (Tormey 2015: 131-136). It can, albeit unintentionally, become a trigger or a focal point for society-wide deliberation about the morality of a contested practice, which may lead to a broader debate about the case for regulation or reform. These dynamics can play out in a fashion that is fast or slow and/or linear and non-linear, such that it is highly difficult to define the specific role that direct action plays in the process. And it should be noted that this is very much a best-case scenario for positive systemic impacts, which can be counter-balanced through reference to actual or potential detrimental impacts that might be associated with direct action.

John Hadley, for instance, criticizes ALF direct action that is threatening or violent through charting its lack of success in prompting democratic publics to consider and evaluate issues surrounding animal rights. He argues credibly that ‘making threats and damaging property are likely either to embolden people to continue what they do or frighten them into changing their behaviour without serious rational reflection upon cross-species ethical relations’ (Hadley 2015: 12). It is also highly relevant that radical direct action has contributed to discrediting animal rights perspectives in public debate, as well as providing legitimating cover for repressive legislation that restricts the tactical repertoires accessible to activists (Jha 2007). These impacts do not necessarily bring closure to debates about the ethics of direct action; again, it is crucial to emphasize that the ALF typically does not aim to have beneficial impacts upon the nature and extent of society-wide deliberation. Its aim, rather, is to prevent or disrupt cruelty to animals in a fashion that is analogous to vigilante enforcement of animal rights. The upshot is that a defence of this particular campaign would have to turn entirely upon a positive appraisal of its aims and effectiveness, which must be sufficiently weighty to override its apparently negative systemic impacts.
**Conclusion: The limits of deliberation**

To summarize the discussion in this paper: direct action is conducted to prevent, deter or disrupt perceived wrongdoing, rather than to express condemnation of wrongdoing. Its use should be guided by three ethical guidelines: (a) a defeasible presumption in favour of limiting coercion to nonviolent tactics, (b) a rejection of all but the most necessary and constrained forms of violence, and (c) a willingness to stand accountable to relevant non-state constituencies. The case for resisting wrongdoing through direct action rather than deliberative or communicative tactics is stronger insofar as: (a) it stands a reasonable chance of preventing or disrupting activity that is a genuine, serious and urgent case of wrongdoing, (b) certain features of the systemic context suggest that deliberative or communicative action would be inappropriate or ineffectual, and (c) direct action has beneficial systemic impacts that are unlikely to have been achieved through deliberative or communicative modes of action.

The discussion has elaborated a framework to orientate reflection on specific cases, while allowing for the possibility that such reflection may reveal unanticipated considerations that weigh for or against this type of protest. In bringing this discussion to a close, let us reflect again on the tension between direct action and the values and practices associated with deliberative democracy. The fact is that the use of coercion, violence or vigilantism, even in accordance with the constraining ethical norms discussed above, is a long way removed from the calmer currents of deliberative politics. It is tempting to resolve this tension through suggesting that such non-deliberative behaviour is only appropriate to the extent that it serves to advance the broader goals of deliberative democracy in the long run. This idea is implicit in some recent discussions, which suggest that non-deliberative action should be evaluated according to whether or not it plays a positive role in the functioning of a deliberative system (Stevenson and Dryzek 2014: 32-35). It is
certainly the case that, as we have seen, the case for direct action can be enhanced insofar as it has beneficial systemic consequences. There are, though, limits to the normative appeal of an argument that makes the systemic test a primary, or determining, factor in evaluating direct action. It would, as noted, lead to a serious disconnect between deliberative theory and political practice, in the sense that activists are typically neither concerned with deliberative systems nor in an epistemic position to anticipate all of the potential systemic consequences of their direct action. It would also foreclose the possibility that, in some cases at least, the case for direct action might survive even if it has, or might be thought to have, negative systemic consequences.

This last point might be resisted by deliberative democrats, but it seems an unavoidable concession to political reality and moral complexity (May 2015: 121). It is simply not plausible to hold that the achievement of a deliberative system is a good that enjoys an overriding weight in all moral deliberations. There may be circumstances where the gravity and urgency of wrongdoing is such—and the prospects for deliberative resolution so remote—that seeking to disrupt it through coercion or constrained violence enjoys moral priority over the gradual or long-term cultivation of deliberative systems. This is not to abandon deliberative democracy, but to present it as a realistic, flexible and non-dogmatic perspective. In many cases, the negative systemic impacts of direct action can make a telling contribution to the case against it. To return to the case of the ALF, their campaign has been defended on the grounds that it rescued animals from labs, deterred or closed down animal experimentation, and—in some cases—led to the revelation and circulation of important information about scientific mistreatment of animals (Garner 2005: 159-160). On the other hand, it is at least debatable whether these goods are sufficiently compelling to warrant coercive threats, property damage and vigilantism. And it is, as Hadley argues, increasingly difficult to maintain that these tactics have been beneficial in the long run, either for the animal
rights movement as a whole or the emergence of system-level deliberation about animal rights (Hadley 2015). The most we can say is that moral evaluation of direct action must remain sensitive to the full range of salient considerations, which means that we must resist the temptation to reduce moral complexities through reference to a systemic test.

References


